

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY,	:	
and BENJAMIN PROTESS,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	<u>COMPLAINT</u>
DEPARTMENT OF TRANSPORTATION,	:	
	:	
Defendant.	:	
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Plaintiffs THE NEW YORK TIMES COMPANY and BENJAMIN PROTESS, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the Department of Transportation (“DOT”) in response to a request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Benjamin Protesse is a reporter for *The New York Times* newspaper and an employee of The New York Times Company.

4. Defendant DOT is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

FACTS

8. On March 15, 2018, Mr. Protesch submitted a FOIA request (the “Request”) to DOT (2018-0196), seeking “all emails sent or received by Senior Members of the Office of the Secretary . . . that also contain reference to the Executive Office of the President (EOP) email domain (@who.eop.gov)” and contain any one of a number of keywords: “Vegas,” “Ruffin,” “Trump Organization,” “Trump International,” “Trump Hotel,” “Eric Trump,” “Donald Trump, Jr.,” and “DJT.” The Request identified the “Senior Members of the Office of the Secretary” as Secretary Elaine Chao, Chief of Staff Geoff Burr, Director of Operations Todd Inman, Advisor Kristine Iverson, Advisor Derek Kan, Deputy Secretary Jeffrey Rosen, Counselor to the Deputy Secretary Matt Kopko, and Senior Advisor for Infrastructure Jim Ray. The Request excludes news clips, but specifically includes “any relevant email that, at one point in the email chain, referenced the EOP domain.”

9. On March 19, 2018, DOT issued a letter to Plaintiff Benjamin Protesch acknowledging receipt of the Request.

10. Between April and November 2018, Plaintiff Benjamin Protesch inquired several times with DOT about the status of the Request.

11. DOT repeatedly informed Plaintiff Benjamin Proress that the Request was being processed and indicated that potentially responsive records existed, but never produced any records.

COUNT I

12. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

13. DOT is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

14. Plaintiffs have exhausted all administrative remedies under FOIA, because DOT has failed to act on the Request within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A), (C).

15. Accordingly, Plaintiffs are entitled to an order compelling DOT to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

16. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

17. Order DOT to provide the requested records to Plaintiffs within 20 business days of the Court's order;

18. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

19. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 18, 2019

_____/s/_____
David E. McCraw, Esq.
Legal Department
The New York Times Company
620 8th Avenue
New York, NY 10018
Phone: (212) 556-4031
Fax: (212) 556-4634
E-mail: mccraw@nytimes.com

Counsel for Plaintiffs